



September 25, 2015

Citizen Suit Coordinator
Department of Justice
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415
Email: ragu-jara.gregg@usdoj.gov

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Office of the Administrator, Mail Code 1101A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Sent via Certified Mail and Electronic Mail

Re: Settlement Agreement – San Francisco Baykeeper v. Shamrock Materials, Inc.

Dear Citizen Suit Coordinator and Administrator McCarthy:

Attached as Exhibit A, please find a copy of a Settlement Agreement between San Francisco Baykeeper (“Baykeeper”) and Shamrock Materials, Inc. (“Shamrock”). The Settlement Agreement resolves Baykeeper’s claims against Shamrock for Clean Water Act violations alleged in Baykeeper’s Notice of Intent to Sue, which Baykeeper sent to Shamrock on August 29, 2014. The parties have agreed to settle this matter without filing a complaint. The Settlement Agreement requires Shamrock to improve its housekeeping procedures, to install drop inlet filters, to closely monitor its stormwater discharges, and to take further measures if its pollution discharges continue to exceed the Numeric Action Levels in NPDES General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 2014-0057 DWQ, California’s general permit regulating stormwater discharges associated with industrial activity.

If you have any questions or comments concerning the terms of the Settlement Agreement, please contact me at (510) 735-9700 x110 or nicole@baykeeper.org.

Sincerely,

Nicole C. Sasaki
Associate Attorney, San Francisco Baykeeper



Pollution hotline: 1 800 KEEP BAY
www.baykeeper.org

1736 Franklin Street, Suite 80C
Oakland, CA 94612
(510) 735-9700

Cc:

Jared Blumenfeld, Regional Administrator
EPA Region 9
75 Hawthorne Street
San Francisco, California 94105

Cc via Electronic Mail:

James Sell, Attorney for Shamrock
Email: jsell@partonsell.com

EXHIBIT A

SETTLEMENT AGREEMENT

WHEREAS, San Francisco Baykeeper, Inc. (“Baykeeper”) is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay and other area waters;

WHEREAS, Shamrock Materials, Inc. (“Shamrock”) operates a ready-mix concrete production facility located at 548 Du Bois Street, San Rafael, California 94901 (the “Facility”);

WHEREAS, Baykeeper and Shamrock are collectively referred to herein as the “Parties”;

WHEREAS, storm water discharges associated with industrial activity at the Facility are regulated pursuant to the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order 97-03-DWQ), issued pursuant to Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342 (hereinafter, “Industrial Stormwater Permit”). These industrial activities include, *inter alia*, the manufacturing of concrete, as well as support services, including fueling, concrete recycling, and storage of bulk materials;

WHEREAS, effective July 1, 2015, storm water discharges associated with industrial activity at the Facility will be regulated pursuant to the NPDES General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 2014-0057 DWQ, issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter “New Industrial Stormwater Permit”);

WHEREAS, the Industrial Stormwater Permit includes the following requirements for all permittees, including Shamrock: 1) develop and implement a storm water pollution prevention plan (“SWPPP”), 2) control pollutant discharges using, as appropriate, best available technology economically achievable (“BAT”) or best conventional pollutant control technology (“BCT”) to prevent or reduce pollutants, 3) implement BAT and BCT through the development and application of Best Management Practices (“BMPs”), which must be included and updated in the

SWPPP, and, 4) when necessary, implement additional BMPs to prevent or reduce any pollutants being discharged from a facility that are causing or contributing to any exceedance of water quality standards;

WHEREAS, on August 29, 2014, Baykeeper served Shamrock, the Administrator of the U.S. Environmental Protection Agency ("EPA"), the Administrator of EPA Region IX, the Executive Director of the State Water Resources Control Board ("State Water Board"), and the Executive Officer of the Regional Water Quality Control Board ("Regional Water Board") with a notice of intent to file suit ("60-Day Notice") under Section 505(b)(1)(A) of the Federal Water Pollution Control Act ("Clean Water Act" or "the Act"), 33 U.S.C. § 1365(b)(1)(A), alleging violations of the Act and the Industrial Stormwater Permit at the Facility;

WHEREAS, the Parties believe it is in their mutual interest and choose to resolve in full Baykeeper's allegations in the 60-Day Notice through settlement and avoid the cost and uncertainties of litigation;

NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES, AS FOLLOWS:

I. BEST MANAGEMENT PRACTICES

1. **Designation and Protocol for All Sampling Locations:** Within sixty (60) days of the Effective Date, Shamrock shall update the Facility SWPPP to fully describe any modifications to the discharge or sampling locations, as shown on the Site Map and described in the existing SWPPP ("Designated Discharge Points"). While the Settlement Agreement is in effect, if Shamrock makes any changes to the sampling locations or Designated Discharge Points at the Facility, Shamrock shall update the SWPPP within forty-five (45) days and submit the revised SWPPP to Baykeeper, consistent with the requirements of Paragraph 5, below.

2. **Non-Structural Best Management Practices.** Beginning on the Effective Date, Shamrock shall implement the following non-structural BMPs:

a. **Storm Drain Inlet/Catch Basin Best Management Practices:**

i. Storm Drain Inlet/Designated Discharge Point Inspections: Within sixty (60) days of the Effective Date and between September 1 and October 1 of each subsequent year, Shamrock shall inspect any storm drain inlets, catch basins, Designated Discharge Points, filtration/treatment devices, and other BMPs in place at the Facility. Shamrock shall promptly clean, as needed, each drain inlet, catch basin, Designated Discharge Point, filtration/treatment device, and other BMPs in order to remove any accumulated dust, sediment, solids, or debris.

ii. Storm Drain Inlet/Designated Discharge Point Maintenance and Cleaning: On a weekly basis between October 1 to May 30 of each year ("Wet Season"), Shamrock shall inspect all storm drain inlets, catch basins, Designated Discharge Points, filtration/treatment devices, and other BMPs in place at the Facility to ensure that they are not in a condition that would materially impair their efficacy, and clean out accessible deposited sediment or debris. Shamrock shall properly dispose of any dust, sediment, debris, or other removed pollutants.

iii. Log of Storm Drain Inlet/Designated Discharge Point Inspections, Maintenance and Cleaning: Shamrock shall prepare and maintain a log of the Storm Drain Inlet/Designated Discharge Point Inspections, Maintenance and Cleaning described herein ("Maintenance Log"). The Maintenance Log shall indicate the staff who completed the maintenance activity and when it was completed. The Log shall be made available for inspection by Baykeeper at any site inspection or otherwise within three (3) business days advance request by Baykeeper.

b. **Site Sweeping:** Shamrock shall mechanically sweep the accessible paved areas of the Facility and shall also sweep non-accessible paved areas by hand or vacuum on each day that Shamrock is actively operating, or more often if necessary. Shamrock shall keep a log or checklist, as appropriate, of the on-site sweeping activity performed ("Sweeping Log"), and shall direct employees and/or contractors to accurately complete the Sweeping Log. The Sweeping Log shall indicate the employee or contractor who conducted the sweeping, the location of the sweeping, and the dates the sweeping activities occurred. The Sweeping Log shall be made

available for inspection by Baykeeper at any site inspection or within three (3) business days of a request by Baykeeper.

c. **Non-Operational Equipment and Material Storage:** Shamrock shall insure that any non-operational equipment and/or materials that have the potential to serve as the source for pollutant loading are stored in a manner to prevent such pollutant load contribution.

d. **Vehicle and Equipment Management:** Shamrock shall continue to implement BMPs to reduce or minimize pollutant release from equipment such as forklifts, hydraulic lifts, trucks, and other heavy equipment that are parked or stored in areas of the Facility from which stormwater discharges. Such BMPs shall include sweeping of paved areas, placing drip pans under equipment stored or parked for a week or longer, weekly inspections for evidence of leaks from such equipment, and prompt clean-up of spills, drips, or leaks from such equipment. Any spilled substances and absorbent materials used in cleaning up spills shall be disposed of in accordance with all local, state, and federal laws and regulations.

e. **Vehicle and Equipment Maintenance:** Shamrock shall not conduct major vehicle or equipment repairs at the Facility in outdoor, uncovered areas from which storm water discharges during rainfall events.

f. **Training:** Beginning on the Effective Date, and annually thereafter, and within thirty (30) days of hiring of new employees, Shamrock shall conduct training for all appropriate employees to explain the requirements of the Facility's SWPPP to the extent applicable to such employee. Training shall focus on the employee's role in implementing various storm water control measures including, for example, implementation of BMPs, sweeping, vehicle maintenance, or facility inspections. Training shall be conducted bilingually (*i.e.*, Spanish/English or other pertinent language) to the extent that such employee is not reasonably able to comprehend training in English. If and when appropriate, Shamrock shall integrate any new training requirements resulting from this Settlement Agreement into the Facility SWPPP. Shamrock shall also update the SWPPP, if and when appropriate, to identify the positions responsible for carrying out storm water management, monitoring, sampling, and SWPPP implementation.

3. **Structural Best Management Practices:** Shamrock shall develop and implement the following structural BMPs:

a. **Drop inlet filters:** Shamrock shall install drop inlet filters at Discharge Point 1 and Discharge Point 2.

b. **Wattles:** Shamrock shall install additional wattles around the storm water drains at Discharge Point 1 and Discharge Point 2.

c. **Cover for rebar storage:** Shamrock shall cover the rebar storage rack, located in the vicinity of Discharge Point 3, which will be designed to cover the top and include side curtains to prevent storm water from coming into contact with the rebar.

4. **Maintenance of Structural BMPs:** Beginning on the Effective Date, Shamrock shall maintain all structural BMPs at the Facility in good operating condition and shall promptly repair any damaged or degraded structural BMPs.

5. **Amendment of SWPPP:** Within thirty (30) days of the Effective Date, Baykeeper shall review the amended SWPPP and propose changes to the SWPPP. Within thirty (30) days of notification by Baykeeper of any proposed changes to the SWPPP, Shamrock shall review and consider Baykeeper's proposed changes. If Shamrock chooses to not make Baykeeper's proposed changes to the SWPPP, Baykeeper may timely invoke Dispute Resolution pursuant to paragraph 20 of the Settlement Agreement. Compliance with the SWPPP, as amended in accordance with this Paragraph provision, shall at all times be a requirement of this Settlement Agreement.

6. **Additional BMPs:** The BMPs included in this Section constitute a preliminary approach to storm water management at the Facility for the first year of the agreement. If, after implementing these BMPs, the sampling conducted in accordance with Section II indicates that the Facility's average storm water discharge, for one or more parameters (i.e., pH; TSS; O&G and/or Fe), exceeds the Numeric Action Level ("NAL"), Shamrock shall prepare and implement by October 1, 2016 an Exceedance Response Actions (ERA) – Level 1 Evaluation ("Action Plan") as outlined in the New Storm Water Permit.

II. SAMPLING, MONITORING, INSPECTION & REPORTING

7. **Designated Discharge Points:** For purposes of this Settlement Agreement, the discharge points identified in Exhibit 1 and labeled “Discharge Point 1,” “Discharge Point 2,” and “Discharge Point 3” shall be the “Designated Discharge Points,” unless Shamrock shall designate alternative discharge points in accordance with the New Industrial Stormwater Permit.

8. **Sampling Program - Stormwater:** Beginning with the 2015-2016 Wet Season, subject to the limitations set forth below, Shamrock shall collect and analyze storm water samples from all of its Designated Discharge Points according to the following sampling schedule:

a. During each Wet Season starting with the 2015-2016 Wet Season, Shamrock shall collect and analyze samples from their Designated Discharge Points in accordance with Section XI.B of the New Industrial Stormwater Permit. Each storm water sample must be analyzed for the presence of each of the parameters required under the New Industrial Stormwater Permit.

b. In the event that Shamrock is unable to comply with Section XI.B of the New Industrial Stormwater Permit, in a Wet Season, then Shamrock shall provide an explanation in their Annual Report.

c. Should the industrial processes materially change at the Facility; that is, the Facility either changes its current industrial use or adds additional industrial uses, as defined in the New Industrial Stormwater Permit, Shamrock shall conduct sampling for any additional Analytical Parameter(s), pursuant to sections X.G.2 and XI.B.6 of the New Industrial Stormwater Permit, likely to be present in the Facility’s storm water discharges in significant quantities as a result of the changed industrial processes. Shamrock shall notify Baykeeper of any such changes within thirty (30) days of such a change.

9. **Sample Result Reporting:** After the Effective Date, Shamrock shall provide complete results from sampling and analysis to Baykeeper within ten (10) calendar days of receipt of the laboratory report from each sampling event.

10. **Reports:** By July 15 of each year that occurs during the term of this Settlement Agreement, Shamrock shall send to Baykeeper a copy of the Annual Report submitted to the

State Water Resources Control Board via SMARTS including any attachments thereto. Further, Shamrock shall provide any Action Plan(s) that addresses an exceedance of one or more analytical parameter's NAL within ten (10) days of submittal via SMARTS.

11. **Baykeeper Review of Action Plan:** Baykeeper shall have thirty (30) days from receipt to propose revisions to the Action Plan. However, if Baykeeper notifies Shamrock within thirty (30) days of receipt of the Action Plan that it is unable to provide comments within thirty (30) days, Baykeeper shall have an additional fifteen (15) days to propose revisions to the Action Plan. Within thirty (30) days of receiving Baykeeper's proposed revisions, Shamrock shall consider each of Baykeeper's recommended revisions to the Action Plan. If Shamrock chooses to not make Baykeeper's proposed revisions to the Action Plan, Baykeeper may timely invoke Dispute Resolution pursuant to paragraph 20 of the Settlement Agreement.

12. **Stipulated Payments:** Shamrock shall pay the following stipulated payments during the Term of this Settlement Agreement, provided however, that Shamrock shall have a fifteen (15) day grace period to submit any report, etc. required in this Settlement Agreement without penalty.

- a. \$500 for each failure to collect a sample required under this Settlement Agreement during the Wet Season beginning with the 2015-2016 Wet Season, unless in accordance with Paragraph 8(b) above;
- b. \$500 per day after the report due date for each failure to timely submit any document, report, or other communication required in this Settlement Agreement; and
- c. \$500 per day payment for every business day (Monday through Friday, excluding state and federal holidays) past the due date that Shamrock fails to submit any payments due under Paragraphs 15-17 of this Settlement Agreement, unless Shamrock corrects the failure within three (3) business days of notification.
- d. Any stipulated payments described above shall be paid to Baykeeper within 30 days of notification of the failure to comply.

13. **Site Access:** During the Term of this Settlement Agreement, Shamrock shall permit representatives of Baykeeper to perform up to two (2) physical inspections per year of the Facility during operating hours ("Site Inspection"). Baykeeper shall e-mail David Ripple of Shamrock at ripple@shamrockmaterials.com and James Sell at jsell@partonsell.com and provide them with a minimum of forty-eight (48) hours' notice in advance of such Site Inspections. Baykeeper shall comply with all safety instructions provided by Shamrock staff during all Site Inspections. During Site Inspections, Baykeeper shall be allowed to inspect and sample any storm water discharges provided that said sampling is in accordance with all provisions of the New Industrial Stormwater Permit, sweeping logs as referenced in Paragraph 2.b., and take photos and/or videos.

14. **Reports:** During the Term of this Settlement Agreement, Shamrock shall provide Baykeeper with a copy of all documents required to be submitted to the Regional Water Board or the State Water Board concerning the Facility's compliance with the Industrial Stormwater Permit or New Industrial Stormwater Permit. Such documents and reports shall be transmitted to Baykeeper via electronic mail within ten (10) days after the documents are submitted to the Regional Water Board or State Water Board.

III. MITIGATION, FEES, AND COSTS

15. **Environmental Mitigation Funding:** As mitigation for the alleged violations set forth in Baykeeper's 60-Day Notice, within ninety (90) days of the Effective Date, Shamrock shall pay the sum of twelve thousand dollars (\$12,000.00) to The Watershed Project, an environmental non-profit organization, for projects that will benefit the San Francisco Bay watershed. The Watershed Project reports the grant funding made with the tendered funds to the U.S. Department of Justice, and the Parties, setting forth the recipient and purpose of the funds. Payment shall be made to The Watershed Project, 1327 South 46th Street, 155 Richmond Field Station, Richmond, California 94804, within ninety (90) days of the Effective Date, with notice to Baykeeper.

16. **Reimbursement of Fees and Costs:** Shamrock shall reimburse Baykeeper in the amount of twenty-three thousand dollars (\$23,000.00) to help cover Baykeeper's reasonable investigation, expert, and attorneys' fees and costs, and all other reasonable costs incurred as a result of investigating the activities at the Facility related to this Settlement Agreement, bringing these matters to Shamrock's attention, and negotiating a resolution of this action. Shamrock shall tender said payment, payable to Baykeeper, within ninety (90) days of the Effective Date.

17. **Compliance Monitoring Funds:** Shamrock shall provide to Baykeeper up to a total of nine thousand dollars (\$9,000.00) for costs and fees associated with monitoring Shamrock's compliance with this Settlement Agreement through the termination date of this agreement. The compliance monitoring fund payments shall be made payable to Baykeeper at the rate of seven hundred and fifty dollars (\$750.00) per quarter commencing on October 1, 2015 and continuing on the first day of each quarter (i.e. January 1st, April 1st, July 1st, October 1st) thereafter, during the remainder of the term of this Settlement Agreement, or until Baykeeper receives notice that the Regional Water Board has approved a Notice of Termination ("NOT") pursuant to paragraph 26 of the Settlement Agreement.

18. **Interest on Late Payments:** Shamrock shall pay interest on any payments, fee or costs owed to Baykeeper under this Settlement Agreement that Baykeeper has not received by the date due or after the expiration of any applicable grace period. The interest shall accrue starting fifteen days after the payment is due and shall be computed at 10% per annum.

19. **Dispute Resolution:** If a dispute under this Settlement Agreement arises, or either Party believes that a breach of this Settlement Agreement has occurred, the Parties shall schedule a meet and confer within ten (10) business days of receiving written notification from the other Party of a request for a meeting to determine whether a violation of this Settlement Agreement has occurred and to develop a mutually agreed upon plan, including implementation dates, to resolve the dispute. If the Parties fail to meet and confer or the meet and confer does not resolve the issue then, after at least seven (7) business days have passed after the meet and confer occurred or should have occurred, unless the parties mutually agree to extend the meet and

confer timeline, either Party shall be entitled to make a demand for arbitration through JAMS. The demand for arbitration shall be filed in writing and with JAMS. Venue for arbitration shall be within fifty (50) miles of San Francisco, California. The arbitrator shall be a retired Federal judge or an attorney with at least ten (10) years' experience and experience in dealing with the Clean Water Act. The arbitration shall be heard by a single arbitrator. If the Parties cannot agree on a single arbitrator, then JAMS shall appoint a single arbitrator. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law and any court having jurisdiction thereof. In the event any party is required to initiate any legal proceeding to enforce or compel arbitration, the prevailing party in any such legal proceeding shall be entitled to recover its attorneys' fees and costs. The prevailing Party of an award rendered by an arbitrator shall be entitled to seek fees and costs incurred in any such action.

IV. JURISDICTION OVER PARTIES AND SUBJECT MATTER OF SETTLEMENT AGREEMENT

20. **Jurisdiction:** For the purposes of this Settlement Agreement, the Parties stipulate that the United States District Court of California, Northern District of California, has jurisdiction over the Parties and subject matter of this Settlement Agreement. The Parties stipulate that venue is appropriate in the Northern District of California and that Shamrock will not raise in the future as part of enforcement of this Settlement Agreement whether Baykeeper has standing to bring any subsequent action pursuant to the Dispute Resolution procedures herein.

21. **Submission of Settlement Agreement to DOJ:** Within three (3) business days of receiving all of the Parties' signatures to this Settlement Agreement, Baykeeper shall submit this Settlement Agreement to the U.S. Department of Justice ("DOJ") and EPA for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) calendar days after receipt by the DOJ, evidenced by correspondence from DOJ establishing the review period. In the event DOJ comments negatively on the provisions of this Settlement Agreement, the Parties agree to meet and confer to attempt to resolve the issues raised by DOJ. If for any reason the U.S. Department of Justice should decline to approve this Settlement Agreement in the form presented, the Parties shall use their best efforts to work together to modify the

Settlement Agreement within thirty (30) days so that it is acceptable to the U.S. Department of Justice.

V. WAIVER AND RELEASES

22. **Baykeeper Waiver and Release of Noticed Parties:** Baykeeper, on its own behalf and on behalf of its officers, directors, employees, parents, subsidiaries, affiliates, and each of their successors and assigns releases Shamrock, its officers, directors, employees, members, parents, subsidiaries, affiliates, successors or assigns, agents, attorneys, and other representatives from and waives all claims raised in the 60-Day Notice, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could have been claimed for matters included in the 60-Day Notice.

23. **Shamrock's Waiver and Release of Baykeeper:** Shamrock, on its own behalf and on behalf of its officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or assigns release Baykeeper and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns from, and waive all claims which arise from or pertain to, the 60-Day Notice, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters included in the 60-Day Notice.

VI. MISCELLANEOUS PROVISIONS

24. **Effective Date:** The Effective Date of this Settlement Agreement shall be the last day for the U.S. Department of Justice to provide comment on this Settlement Agreement, i.e., the 45th day following the U.S. Department of Justice's receipt of the Settlement Agreement.

25. **Term of Settlement Agreement:** This Settlement Agreement shall continue in effect for three (3) years after the Effective Date (the "Term"), at which time the Settlement Agreement, and all obligations under it, shall automatically terminate.

26. **Early Termination:** If Shamrock should cease industrial operations at the site and file a Notice of Termination ("NOT") under the Industrial Stormwater Permit or New Industrial Stormwater Permit prior to the termination date of this Settlement Agreement, Shamrock shall

send Baykeeper a copy of the proposed NOT concurrent with its submittal to the Regional Water Board. Within ten (10) days of the Regional Water Board's approval of the NOT, Shamrock shall notify Baykeeper in writing of the approval and remit all outstanding payments, including stipulated payments, to Baykeeper. In the event a new successor or assign continues industrial operations at the site and assumes responsibility for implementation of this Settlement Agreement pursuant to Paragraph 37, Shamrock shall notify Baykeeper within ten (10) days of the transition. However, if the new successor or assign is an entity owned or controlled by Shamrock, there shall be no obligation to so inform Baykeeper.

27. **Execution in Counterparts:** The Settlement Agreement may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

28. **Signatures:** The Parties' signatures to this Settlement Agreement transmitted by facsimile or electronic mail transmission shall be deemed binding.

29. **Construction:** The language in all parts of this Settlement Agreement, unless otherwise stated, shall be construed according to its plain and ordinary meaning. The captions and paragraph headings used in this Settlement Agreement are for reference only and shall not affect the construction of this Settlement Agreement.

30. **Authority to Sign:** The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Party and have read, understood, and agreed to all of the terms and conditions of this Settlement Agreement.

31. **Integrated Settlement Agreement:** All agreements, covenants, representations, and warranties, express or implied, oral or written, of the Parties concerning the subject matter of this Settlement Agreement are contained herein.

32. **Severability:** In the event that any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

33. **Choice of Law:** This Settlement Agreement shall be governed by the laws of the United States or, where applicable, the laws of the State of California.

34. **Full Settlement:** This Settlement Agreement constitutes a full and final settlement of this matter. It is expressly understood and agreed that the Settlement Agreement has been freely and voluntarily entered into by the Parties with and upon advice of counsel.

35. **Negotiated Agreement:** The Parties have negotiated this Settlement Agreement, and agree that it shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Settlement Agreement, and any uncertainty and ambiguity shall not be interpreted against any one party.

36. **Modification of the Agreement:** This Settlement Agreement, and any provisions herein, may not be changed, waived, or discharged unless by a written instrument signed by each of the Parties.

37. **Assignment:** Subject only to the express restrictions contained in this Settlement Agreement, all of the rights, duties, and obligations contained in this Settlement Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

38. **Mailing of Documents to Baykeeper/Notices/Correspondence:** Any notices or documents required or provided for by this Settlement Agreement or related thereto that are to be provided to Baykeeper pursuant to this Settlement Agreement shall be, to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed below or, if electronic mail transmission is not feasible, via certified U.S. Mail with return receipt, or by hand delivery to the following address:

San Francisco Baykeeper
Attention: Nicole Sasaki
1736 Franklin Street, Suite 800
Oakland, CA 94612
E-mail: nicole@baykeeper.org

Unless requested otherwise by Shamrock, any notices or documents required or provided for by this Settlement Agreement or related thereto that are to be provided to Shamrock pursuant

to this Settlement Agreement shall, to the extent feasible, be provided by electronic mail transmission to the e-mail addresses listed below, or, if electronic mail transmission is not feasible, by certified U.S. Mail with return receipt, or by hand delivery to the addresses below:

Shamrock Materials, Inc.
Attention: Eugene B. Ceccotti, President & CEO
181 Lynch Creek Way, Suite 200
Petaluma, CA 94975
Email: donomadi@shamrockmaterials.com

And

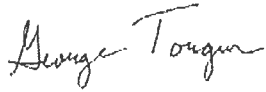
James E. Sell
Parton | Sell | Rhoades
900 Larkspur Landing Circle, Suite 150
Larkspur, CA 94939
Email: jsell@partonsell.com

Notifications of communications shall be deemed submitted on the date that they are emailed, or postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any changes of address or addressees shall be communicated in the manner described above for giving notices.

49. Impossibility of Performance: No Party shall be considered to be in default in the performance of any of its obligations under this Settlement Agreement when performance becomes impossible due to circumstances beyond the Party's control, including without limitation any act of God, act of war or terrorism, fire, earthquake, and flood. "Circumstances beyond the Party's control" shall not include normal inclement weather, economic hardship, or inability to pay. Any Party seeking to rely upon this Paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to overcome, the impossibility of performance.

SAN FRANCISCO BAYKEEPER

Date: September 11, 2015



George Torgun

Managing Attorney, San Francisco Baykeeper

Shamrock Materials, Inc.

Date: 09/24/2015, 2015

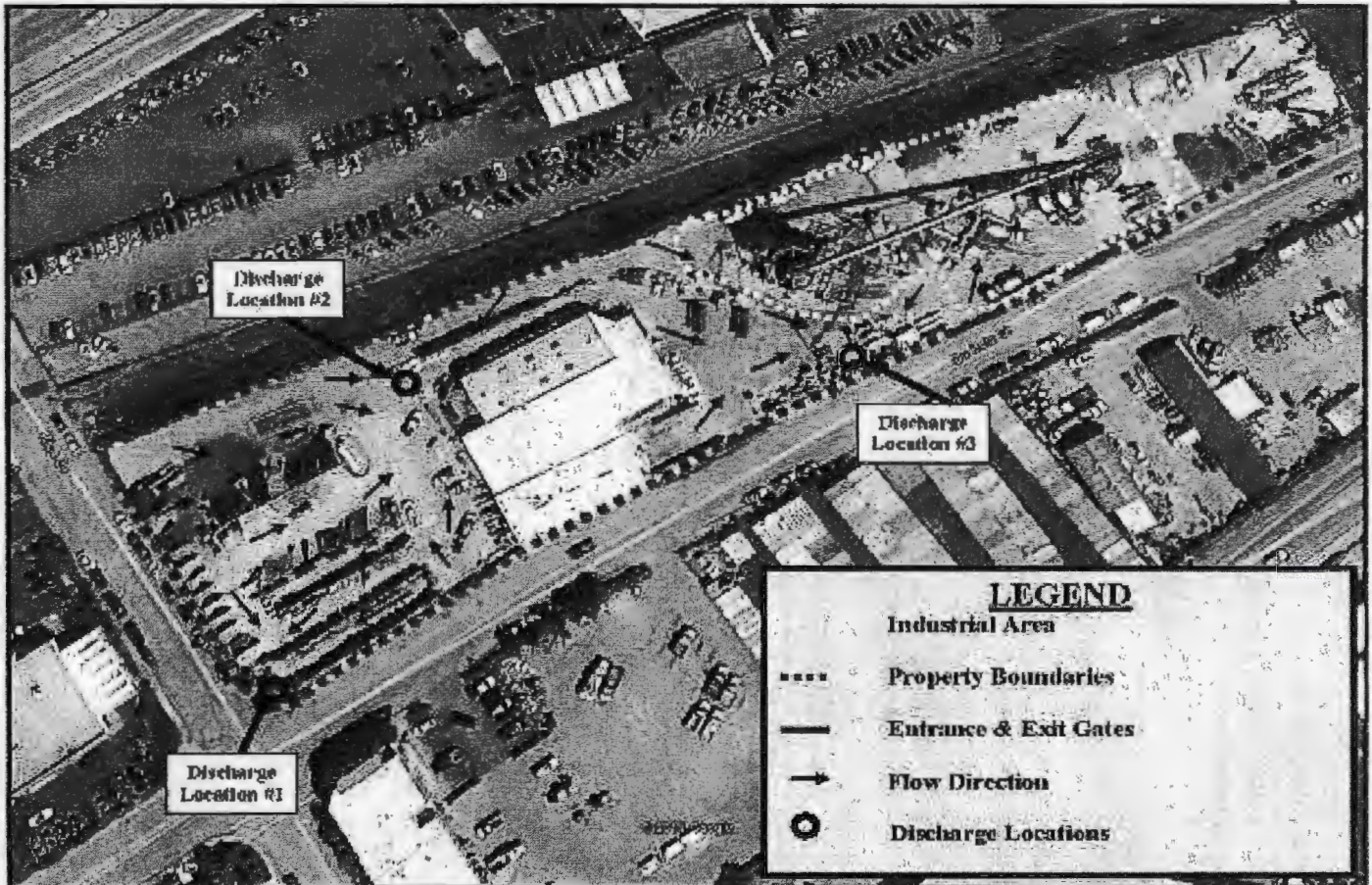


Eugene B. Ceccotti

President & CEO

EXHIBIT 1

FACILITY SITE MAP



548 DU BOIS STREET—SAN RAFAEL, CA